

Bill No. 27-03
Concerning: Moderately Priced
Dwelling Units – Amendments
Revised: 7-24-03 Draft No. 2
Introduced: July 29, 2003
Expires January 29, 2005
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmembers Perez and Andrews

AN ACT to:

- (1) revise the requirements for building moderately priced dwelling units and repeal the authority of the Director of the Department of Housing and Community Affairs to accept certain alternative offers;
- (2) extend the price and rent control periods for certain moderately priced dwelling units; and
- (3) generally amend the law governing moderately priced dwelling units.

By amending

Montgomery County Code
Chapter 25A, Housing, Moderately Priced
Sections 25A-2, 25A-3, 25A-5, and 25A-9

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Sections 25A-2, 25A-3, 25A-5, and 25A-9 are amended as follows:

25A-2. Declaration of public policy.

The County Council hereby declares it to be the public policy of the County to:

* * *

(6) Ensure that private developers constructing moderately priced dwelling units under this Chapter incur no loss or penalty as a result thereof, and have reasonable prospects of realizing a profit on such units by virtue of the MPDU density bonus provision of Chapter 59 and, in certain zones, the optional development standards[; and]

[(7) Allow developers of residential units in qualified projects more flexibility to meet the broad objective of building housing that low- and moderate-income households can afford by letting a developer, under specified circumstances, comply with this Chapter by contributing to a County Housing Initiative Fund].

25A-3. Definitions.

The following words and phrases, as used in this Chapter, have the following meanings:

* * *

(g) Control period means the time an MPDU is subject to either resale price controls and owner occupancy requirements or maximum rental limits, as provided in Section 25A-9. The control period is [10] 20 years for sale units and [20] 30 years for rental units, and begins on the date of initial sale or rental. If a sale or rental MPDU is sold to an eligible person within [10] 20 years after its initial sale or rental, and if (in the case of a sale MPDU that is not bought and resold by a government

agency) the unit was originally offered for sale after March 1, 2002, the unit must be treated as a new sale MPDU and a new control period must begin on the date of the sale.

* * *

25A-5. Requirement to build MPDU's; agreements[; alternatives].

* * *

[(e) (1) In exceptional cases, instead of building the required number of MPDUs, an applicant may offer to:

- (A) Build significantly more MPDUs at one or more other sites in the same or an adjoining planning area;
- (B) Convey land in the same or an adjoining planning area that is suitable in size, location and physical condition for significantly more MPDUs;
- (C) Contribute to the Housing Initiative Fund an amount that will produce significantly more MPDUs; or
- (D) Do any combination of these alternatives that will result in building significantly more MPDUs.

(2) If the Director finds that:

- (A) In the project or subdivision originally proposed by the applicant, an indivisible package of resident services and facilities to be provided to all households would cost the occupants of the MPDUs so much that it is likely to make the MPDUs effectively unaffordable by eligible households; and
- (B) An offer made by an applicant under subsection (e)(1) will achieve significantly more MPDUs or units which low-

and moderate-income households can more easily afford;
and

(C) These public benefits outweigh the benefit of constructing MPDUs in each subdivision throughout the County, and acceptance of the applicant's offer will achieve the objective of providing a broad range of housing opportunities throughout the County;

the Director must accept the offer made by the applicant instead of requiring the construction of MPDUs by the applicant. If the applicant can feasibly build significantly more MPDUs at another site, the Director must not approve any other alternative under subsection (e)(1).

(3) The procedures for considering and implementing alternative offers must be established by executive regulation. To implement an offer, the applicant must sign an agreement with the Director not later than a time provided in the regulations.] Reserved

* * *

(m) Nothing in this Chapter prohibits an applicant from voluntarily building MPDUs, as calculated under subsection (c), in a development with fewer than 35 dwelling units at one location, and in so doing from qualifying for an optional method of development under Chapter 59. A development with fewer than 35 dwelling units where an applicant voluntarily builds MPDUs must comply with any procedures and development standards that apply to a larger development under this Chapter and Chapter 59. [Subsection (e) and] Section 25A-6(b) [do] does not apply to an applicant who voluntarily builds MPDU's under

this subsection and in so doing qualifies for an optional method of development.

25A-9. Control of rents and resale prices; foreclosures.

* * *

(c) *First sale after control period ends.*

* * *

(3) The Department and the Commission, in that order, may buy an MPDU the first time the MPDU is offered for sale after [10] 20 years after the original sale or rental, and may resell the unit to an eligible person. A resale by the Department or Commission starts a new control period.

(4) The Commission and any partnership in which the Commission is a general partner need not pay into the Housing Initiative Fund any portion of the resale price of any MPDU that it sells after [10] 20 years after the original sale or rental.

(d) *Initial and [subsequent] later rent controls.* Unless previously sold under subsection (c)(1), [moderately priced dwelling units] MPDUs built or offered for rent under this Chapter must not be rented for [20] 30 years after the original rental at a rent greater than that established by Executive regulations [adopted by the County Executive under method (1)]. [Whenever any moderately priced dwelling unit] Any MPDU (other than those built, sold, or rented under any federal, state, or local program offered by the Commission) [is] offered for rent during the [20] 30-year control period[, it] must be offered exclusively for 60 days to one or more eligible persons, as determined by the Department, for use as [his or her own] that person's residence, and to the Commission. The Commission may assign its right to rent such units to persons of

low or moderate income who are eligible for assistance under any federal, state, or local program identified in Executive regulations [adopted by the County Executive under method (1)].

(e) *Foreclosure or other court-ordered sales.* If an MPDU is sold through a foreclosure or other court-ordered sale, a payment must be made to the Housing Initiative Fund as follows:

- (1) If the sale occurs during the first [10] 20 years after the original sale or rental, any amount of the foreclosure sale price which exceeds the total of the approved resale price under subsection (a), reasonable foreclosure costs, and liens filed under the Maryland Contract Lien Act, must be paid to the Housing Initiative Fund. If the remaining balance under the original first deed of trust or mortgage exceeds the resale price under subsection (a), then the difference between the foreclosure sales price and the balance of the original first deed of trust (plus reasonable foreclosure costs) must be paid to the Fund.
- (2) If the sale occurs after the first [10] 20 years after the original sale or rental, and the unit was originally offered for sale or rent after March 20, 1989, the payment to the Fund must be calculated under subsection (c).
- (3) If the MPDU is a rental unit, the resale price under subsections (a) and (c) must be calculated using the maximum sales price in effect when the unit was originally offered for rent.
- (4) If the MPDU is sold subject to senior liens, the lien balances must be included in calculating the sale price.

All MPDU covenants must be released after the required payment is made into the Housing Initiative Fund.

* * *

(g) *Bulk transfers.* This section does not prohibit the bulk transfer or sale of all or some of the sale or rental MPDUs in a subdivision within [20] 30 years after the original rental or offering for sale if the buyer is bound by all covenants and controls on the MPDUs.

* * *

Sec. 2. Applicability.

The amendments to Chapter 25A made by Section 1 of this Act which extend the control period for sale and rental MPDUs do not apply to any MPDU that was originally offered for sale or rent before this Act takes effect.

Approved:

Michael L. Subin, President, County Council

Date

Approved:

Douglas M. Duncan, County Executive

Date

This is a correct copy of Council action.

Mary A. Edgar, CMC, Clerk of the Council

Date